

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CLIFFORD WAYNE MILLER,

Case No. 3:19-cv-00673-MMD-WGC

Petitioner,
v.

ORDER

STATE OF NEVADA, et al.,

Respondents.

This habeas matter is before the Court on Petitioner Clifford Wayne Miller's unopposed first motion for extension of time (ECF No. 25).

Miller initiated this case in November 2019, by filing a *pro se* petition for writ of habeas corpus. The Court provisionally appointed the Federal Public Defender on January 9, 2020. (ECF No. 12.) Counsel filed a notice of appearance on February 24, 2020. (ECF No. 16.) The Court entered a scheduling order giving Miller approximately 90 days—until May 26, 2020—to file an amended petition and/or seek other appropriate relief. (ECF No. 17.) Miller filed a second amended petition, then sought and received leave to file a third amended petition by May 26, 2020. (ECF Nos. 20, 22, 23.)

Miller's current motion requests an additional 120 days, up to and including September 23, 2020, to file a third amended petition. Counsel represents that a lengthy extension is necessary because Miller's case involves two jury trials, over 23 claims were raised on direct and post-conviction appeal, more than a dozen boxes of records were received from Miller's prior attorneys, and the COVID-19 pandemic interrupted normal operations at the Federal Public Defender's office with the majority of attorneys and staff still working from home most of the time.

Habeas actions are civil actions under federal practice and are subject to the

1 reporting requirements of the Civil Justice Reform Act of 1990 (“CJRA”), 28 U.S.C. § 471
2 *et seq.* The CJRA sets a three-year goal for resolution of each civil case on the merits, *id.*
3 § 476(a)(3), and encourages “setting, at the earliest practicable time, deadlines for filing
4 motions and a time framework for their disposition,” *id.* § 473(a). Although the procedural
5 and legal complexity of some habeas actions may impede the three-year objective, the
6 Court attempts to posture each case for a merits decision within three years of filing.

7 A common-sense balance of competing factors is necessary to determine whether
8 good cause exists to extend a deadline set in a habeas scheduling order. Too conservative
9 a policy may result in potentially meritorious claims going undiscovered—a result contrary
10 to the interests of justice. Too liberal an approach results in lengthy habeas litigation
11 extending beyond the CJRA’s three-year goal, which is generally incompatible with the
12 purposes served by the Antiterrorism and Effective Death Penalty Act (AEDPA), e.g.,
13 finality, efficiency, and comity.

14 The new deadline approved in this order falls nearly eight months after counsel’s
15 appointment and 10 months after Miller initiated this case *pro se*. Although mindful of
16 counsel’s duties of representation as well as the difficulties the COVID-19 pandemic has
17 imposed on the parties and their counsel, based on the length of time counsel has received
18 to investigate and file a third amended petition, the Court finds that any additional delay
19 may seriously jeopardize the parties’ ability to brief this case for merits consideration
20 before November 2022. Thus, further extensions of time are unlikely.

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1 Good cause appearing, it is therefore ordered that Petitioner Clifford Wayne Miller's
2 motion for extension of time (ECF No. 25) is granted. Miller has until September 23, 2020,
3 to file a third amended petition. Further extensions of time are not likely to be granted
4 absent compelling circumstances and a strong showing of good cause why the amended
5 pleading could not be filed within the extended time allowed despite the exercise of due
6 diligence.

7 DATED THIS 22nd day of May 2020.
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10 MIRANDA M. DU
11 CHIEF UNITED STATES DISTRICT JUDGE
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